

# SENATE BILL REPORT

## SB 6033

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As of February 23, 2007

**Title:** An act relating to beer and wine warehousing and distribution by a primary grocery distributor at the direction of an independent grocery store customer.

**Brief Description:** Concerning beer and wine warehousing and distribution by a primary grocery distributor at the direction of an independent grocery store.

**Sponsors:** Senators Kohl-Welles and Clements.

**Brief History:**

**Committee Activity:** Labor, Commerce, Research & Development: 2/22/07.

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### SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

**Staff:** Jennifer Strus (786-7316)

**Background:** Washington and many other states have so-called three-tier systems for the sale and distribution of beer and wine in which the producer, distributor, and retailer tiers are separate.

Beer and wine must be delivered to the retailer's licensed premises, i.e., the individual store. Washington prohibits retailers from storing or taking delivery of beer and wine at a central warehouse.

In *Costco Wholesale Corporation v. Hoen, et. al* (Costco), Judge Marsha Pechman of the U.S. District Court for the Western District of Washington ruled that the central warehouse ban was preempted by federal antitrust law. Judge Pechman stayed the judgment until May 1, 2007. The case is pending before the Ninth Circuit Court of Appeals with oral argument scheduled the week of March 5, 2007. Although the Ninth Circuit denied the state's request for a further stay pending its ruling on the appeal, it ruled the state may renew the request for a stay at oral argument.

**Summary of Bill:** It is the Legislature's intent that no segment of the grocery store industry be disadvantaged as the result of a judgment by the court in the Costco case. If, as a result of the Costco case, the Liquor Control Board permits retailers to take delivery of beer or wine at a central warehouse owned by the retailer, central warehousing by independent grocery stores that do not own a warehouse is permitted.

An independent grocery store may take delivery and store beer and wine at, and transport to its

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store from, a primary grocery distributor that supplies at least 30 percent of the independent grocery store's merchandise on a regular basis. An independent grocery store is defined as a store with a beer and wine grocery store license that makes retail sales of commercially prepared and prepackaged food and ingredients that are customarily sold for off-premises consumption, that is not primarily engaged in making retail sales of prepared food or food and food ingredients through vending machines, and does not own a warehouse. A primary grocery distributor makes wholesale sales of a broad mix of products, as further defined, to independent grocery stores.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: The issues involved in the Costco case are still up in the air but want to make sure that depending on what happens, independent grocers can move their product the same way that large chain grocers can.

CON: We understand the intent of the bill but should wait until the Costco court has decided the case before taking any action so that the Legislature knows the framework for the action it may have to take.

OTHER: The Legislature should wait until the ninth circuit makes its decision before taking any legislative action dealing with the issues raised in the Costco matter.

**Persons Testifying:** PRO: Carrie Tellefson, Washington Food Industry; Bob Broderick, NW Grocers.

CON: Stu Halsan, Coors Brewing Company; Ron Main, Washington Beer and Wine Wholesalers.

Other: Rick Garza, LCB.